

ISSUE DATE: July 31, 1995

DOCKET NO. E-017/M-95-321

ORDER DENYING PETITION AND GRANTING VARIANCE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Joel Jacobs
Marshall Johnson
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request of Otter Tail
Power Company to Forgive the Demand
Charge and Ratchet Clause for Lakehead
Pipeline Cass Lake Pumping Station for
April 1995

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PROCEDURAL HISTORY

On March 29, 1995, Lakehead Pipeline (Lakehead) contacted Otter Tail Power Company (Otter Tail or the Company) regarding a rate for service to Lakehead's Cass Lake pumping station. Lakehead requested that Otter Tail suspend demand charges and a ratchet provision for additional demand incurred at the Cass Lake pumping station in the month of April. In return, Lakehead would pay a premium for additional energy consumed. Suspension of the ratchet provision and demand charges would enable Lakehead to operate both of its motors at the Cass Lake facility, a practice which Lakehead seldom attempts because of the potential effect of the ratchet provision. Lakehead termed its proposal a "load-shifting experiment" to achieve greater pipeline efficiency.

Lakehead submitted its request to Otter Tail in written form on April 5, 1995.

On April 10, 1995, Otter Tail filed a petition seeking Commission approval to implement Lakehead's requested rate. Under Otter Tail's proposal, Lakehead's Cass Lake demand charges above its January, 1995, level would be suspended for the month of April, 1995. The ratchet clause associated with April's excess demand would be suspended. Otter Tail would bill Lakehead an additional \$0.006 per kWh for April energy consumption above January's energy consumption level.

Otter Tail stated that Lakehead was already conducting its "load-shifting experiment" and asked the Commission to treat the petition on an expedited basis. Otter Tail at first indicated that the proposal was a "real-time pricing" experiment, but later dropped this element from its petition.

Otter Tail declared that the rate proposal is in the public interest because the Company has excess capacity and high reserve margins during the month of April and Lakehead would not activate the second motor without the special rate. If the rate were not implemented in April, the load-shifting test would be delayed until after the MAPP¹ summer season, delaying any operational improvements for Lakehead by at least six months.

According to Otter Tail, the proposed additional energy charges would cover the Company's incremental costs and contribute to fixed costs. Otter Tail reasoned that it would not be in violation of Minn. Stat. § 216B.06, which confines utilities to their filed schedules of rates, because it would hold the bill for Lakehead's April energy use until after the Commission reaches a decision on the rate proposal. Otter Tail acknowledged that it would need a variance to Minn. Rules, part 7820.5300, subp. 3, which requires that utility bills be mailed no later than three working days after the billing date.

On April 20, 1995, the Department of Public Service (the Department) filed comments in opposition to the Company's proposal. The Department stated that the Company's request for expedited treatment is inappropriate, since the petition seeks to establish a new rate. The Department believed that the Company's rate proposal was procedurally and substantively defective and should be rejected. The Department stated that Otter Tail should not have put Lakehead at risk for additional charges by proceeding with their rate agreement without Commission approval. Because application of the ratchet provision would penalize Lakehead unfairly, the Department reasoned that Otter Tail should not apply the ratchet provision for Lakehead's April energy consumption.

On May 5, 1995, Otter Tail filed reply comments.

The matter came before the Commission for consideration on July 6, 1995.

FINDINGS AND CONCLUSIONS

I. INTRODUCTION

Two separate questions are raised by this petition: the merits of applying a special rate for Lakehead in these circumstances, and the legality of the rate application.

Because the Commission finds that Otter Tail could not legally apply a new rate for the April service to Lakehead without prior Commission approval, the Commission will not reach the merits of the proposed rates in this Order.

¹ Mid-Continent Area Power Pool

II. COMMISSION ACTION

Otter Tail has a Large General Service Time-of-Use Tariff on file with the Commission. The rate provides for specific demand and energy charges, plus a 75% 11-month ratchet provision. All parties agree that Lakehead was properly under this filed tariff during the month of April, when it took service to operate the second motor at the Cass Lake pumping station.

Otter Tail now requests that a new tarified rate be applied retrospectively for the April service.

The Commission finds that it lacks authority under relevant statutory or case law to authorize Otter Tail's retroactive application of a new rate for service to Lakehead in April, 1995. Statutes and case law require utilities to apply the rates which are in effect at the time of service. Those rates must be approved by the Commission in a process which is prospective in nature.

Minn. Stat. § 216B.06 provides in relevant part as follows:

No public utility shall directly or indirectly, by any device whatsoever, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedules of rates of the public utility applicable thereto...

Minn. Stat. § 216B.16, subd. 1 begins as follows:

Unless the commission otherwise orders, no public utility shall change a rate which has been duly established under this chapter, except upon 60 days notice to the commission.

In Peoples Natural Gas Co. v. Minnesota, 369 N.W. 2d 530 (Minn. 1985) the Minnesota Supreme Court stated that the Commission must approve rates on a prospective basis.

Ratemaking is a quasi-legislative function, *see St. Paul Chamber of Commerce v. Minnesota Public Service Comm'n*, 312 Minn. 250,262, 251 N.W.2d 350,358 (1977), and legislation operates prospectively. Indeed, the Public Utility Act expressly prohibits retroactive ratemaking. Minn. Stat. § 216B.23, subd. 1 (1984), provides: [T]he commission shall***by order fix reasonable rates****to be imposed, observed and followed in the future,*" (Emphasis added.)

The Commission, therefore, must require the Company to apply the rate in effect at the time of service. The fact that Otter Tail is in this case holding the bill for the April service does not change this obligation. In order for the system of filed tariffs to be effective, the public must be able to look to the rate on file *at the time service is rendered*. The publicly filed rate for a period of service cannot be altered by a utility which chooses to delay billing while it obtains approval for a new rate.

The Commission recognizes that there may have been merit to the rate proposed by Lakehead

and agreed to by Otter Tail. The Commission is particularly sympathetic to the plight of Lakehead, which now faces charges it did not contemplate under the parties' agreement. Under the present regulatory scheme, however, the Commission must have the proper 60 day notice before it can consider approving a new rate. Although the Department's suggestion to allow suspension of the ratchet provision is appealing, the Department can cite no statutory authority for retroactively adjusting this portion of the filed tariff. However the Commission may wish to accommodate parties who are trying to achieve efficiencies through flexible rate application, the Commission's duty to follow the controlling statutes and case law is clear.

Finally, the Commission will grant Otter Tail a variance from Minn. Rules, part 7820.5300, subp. 3 to allow Otter Tail to bill Lakehead more than three days after the billing date. The variance fulfills the three criteria of Minn. Rules, part 7829.3200. First, enforcement of the rule would impose an excessive burden upon Otter Tail by penalizing the Company for a good faith delay. Second, granting the variance would not adversely affect the public interest because Lakehead is aware of the pending charges. Third, granting the variance would not conflict with standards imposed by law.

ORDER

1. The Commission denies Otter Tail's April 10, 1995, petition.
2. The Commission varies Minn. Rules, part 7820.5300, subp. 3 to allow Otter Tail to bill Lakehead more than three days after the billing date.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)